

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

ROANY MERCEDES,

Plaintiff(s),

*-against-*THE ROMAN CATHOLIC DIOCESE OF BROOKLYN,  
NEW YORK; and THE ROMAN CATHOLIC CHURCH OF  
ST. PAUL THE APOSTLE, IN THE BOROUGH OF  
QUEENS, IN THE CITY OF NEW YORK;

Defendant(s).

Index No. \_\_\_\_\_

**Summons**

Date Index No. Purchased: \_\_\_\_\_

November 14, 2019

To the above named Defendant(s)

THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW YORK, 310 Prospect Park West, Kings County, New  
York; and THE ROMAN CATHOLIC CHURCH OF ST. PAUL THE APOSTLE, IN THE BOROUGH OF QUEENS,  
IN THE CITY OF NEW YORK, 98-16 55th Avenue, Corona, Queens County, New York.

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is one or more Defendant resides in Kings County, New York  
which is located in Kings County, New York

Dated: New York, New York

November 14, 2019

SIMMONS HANLY CONROY

by 

Paul J. Hanly, Jr.

Attorneys for Plaintiff

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

ROANY MERCEDES,

*Plaintiff,*

v.

THE ROMAN CATHOLIC DIOCESE OF BROOKLYN, NEW  
YORK; and THE ROMAN CATHOLIC CHURCH OF ST. PAUL  
THE APOSTLE, IN THE BOROUGH OF QUEENS, IN THE CITY  
OF NEW YORK;

*Defendants.*

Index No.

**COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Roany Mercedes, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Roman Catholic Diocese of Brooklyn, New York and The Roman Catholic Church of St. Paul the Apostle, in the Borough of Queens, in the City of New York, and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

**JURISDICTION AND VENUE**

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants reside in New York.
2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.
3. Venue for this action is proper in the County of Kings pursuant to CPLR 503 in that one or more of the Defendants reside in this County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this County.

**PARTIES**

4. Plaintiff Roany Mercedes ("Plaintiff") is an individual residing in Tennessee.

5. Defendant The Roman Catholic Diocese of Brooklyn, New York ("Diocese of Brooklyn") is a religious corporation organized pursuant to the New York Religious Corporations Law, with its principal office at 310 Prospect Park West, Kings County, New York. The Diocese of Brooklyn is a Roman Catholic diocese. At all relevant times, the Diocese of Brooklyn created, oversaw, supervised, managed, controlled, directed and operated parishes or churches of the Diocese of Brooklyn, including during all relevant times, The Roman Catholic Church of St. Paul the Apostle, in the Borough of Queens, in the City of New York.

6. Defendant The Roman Catholic Church of St. Paul the Apostle, in the Borough of Queens, in the City of New York ("St. Paul the Apostle") is a Roman Catholic parish within and under the authority of the Diocese of Brooklyn and is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 98-16 55th Avenue, Corona, Queens County, New York. At all relevant times, the Diocese of Brooklyn created, oversaw, supervised, managed, controlled, directed and operated St. Paul the Apostle.

#### **FACTS COMMON TO ALL CLAIMS**

7. In or about 1983, Plaintiff and his family were parishioners of and attended St. Paul the Apostle when Plaintiff was a minor child.

8. During the times relevant to the allegations set forth herein, Father Thomas E. Fox ("Father Fox") was assigned by Defendant Diocese of Brooklyn to be a priest at St. Paul the Apostle where Plaintiff's family were parishioners. Father Fox died in 2006.

9. Through his positions at, within, or for the Defendants Diocese of Brooklyn and St. Paul the Apostle, Father Fox was put in direct contact with members of the Plaintiff's family, including Plaintiff, a minor parishioner of St. Paul the Apostle.

10. In approximately 1983 when Plaintiff was approximately nine years of age, Plaintiff attended religious education classes at the rectory affiliated with St. Paul the Apostle. Some of these religious education classes were taught by Father Fox. Plaintiff

also gave confession to Father Fox at St. Paul the Apostle.

11. Father Fox used such encounters, gained through his position at St. Paul the Apostle which granted him access to Plaintiff when Plaintiff was approximately nine years of age, to repeatedly sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff in violation of the laws of the State of New York.

**Defendants' Responsibility for the Abuse Committed by Father Fox**

12. At all times material hereto, Father Fox was under the management, supervision, employ, direction and/or control of Defendants Diocese of Brooklyn and St. Paul the Apostle.

13. Through his positions at, within, or for Defendants Diocese of Brooklyn and St. Paul the Apostle, Father Fox was put in direct contact with Plaintiff.

14. Father Fox used his position at, within, or for Defendants Diocese of Brooklyn and St. Paul the Apostle and the implicit representations made by them about his character that accompanied that position, to gain Plaintiff's trust and confidence and to create an opportunity to be alone with, and to sexually touch, Plaintiff.

15. Defendants Diocese of Brooklyn and St. Paul the Apostle had the duty to reasonably manage, supervise, control and/or direct priests who served at St. Paul the Apostle, and specifically, had a duty not to aid pedophiles such as Father Fox by assigning, maintaining, and/or appointing them to positions with access to minors.

16. Defendants Diocese of Brooklyn and St. Paul the Apostle knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father Fox, who sexually abused Plaintiff.

17. Defendant Diocese of Brooklyn had a duty to the Plaintiff to properly supervise Diocese of Brooklyn priests to ensure that priests did not use their positions with the Diocese of Brooklyn as a tool for grooming and assaulting vulnerable children. Defendant Diocese of Brooklyn knew or should have known that Father Fox used his positions with the Diocese of Brooklyn to sexually abuse minor children, including the

Plaintiff.

### **Consequences of the Abuse**

18. Plaintiff suffered personal physical and psychological injuries and damages as a result of Father Fox's actions, as well as other damages related thereto, as a result of the childhood sexual abuse Plaintiff sustained.

19. As a direct result of the Defendants Diocese of Brooklyn's and St. Paul the Apostle's conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Father Fox's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION**

#### **Negligent Hiring/Retention/Supervision/Direction**

20. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

21. Defendants Diocese of Brooklyn and St. Paul the Apostle owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Father Fox in his role as priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Father Fox did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

22. Defendant Diocese of Brooklyn at all relevant times held the parishes of the Diocese of Brooklyn out to be safe places for minors to attend, and its priests as

individuals to whom it was safe to entrust the care of minor children. Defendant Diocese of Brooklyn entered into an express and/or implied duty to safely treat Plaintiff and assumed the duty to protect and care for him.

23. Father Fox repeatedly sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff when Plaintiff was a minor at St. Paul the Apostle.

24. Defendants Diocese of Brooklyn and St. Paul the Apostle negligently hired, retained, directed, and supervised Father Fox, though they knew or should have known that Father Fox posed a threat of sexual abuse to minors.

25. Defendants Diocese of Brooklyn and St. Paul the Apostle knew or should have known of Father Fox's propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

26. Defendants Diocese of Brooklyn and St. Paul the Apostle were negligent in failing to properly supervise Father Fox.

27. The sexual abuse of children by adults, including priests, is a foreseeable result of negligence.

28. At all times material hereto, Defendants Diocese of Brooklyn's and St. Paul the Apostle's actions were willful, wanton, malicious, reckless, negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

29. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

30. By reason of the foregoing, Defendants Diocese of Brooklyn and St. Paul the Apostle are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**SECOND CAUSE OF ACTION**  
**Negligence/Gross Negligence**

31. Plaintiff repeats and re-alleges each and every allegation set forth in

paragraphs 1 through 19 as if fully set forth herein.

32. Defendants Diocese of Brooklyn and St. Paul the Apostle knew, or were negligent in not knowing, that Father Fox posed a threat of sexual abuse to children.

33. The acts of Father Fox described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with Defendants Diocese of Brooklyn and St. Paul the Apostle.

34. Defendants Diocese of Brooklyn and St. Paul the Apostle owed Plaintiff, a minor at the relevant times of abuse, a duty to protect him from Father Fox's sexual deviancy and the consequential damages, both prior to and/or subsequent to Father Fox's misconduct.

35. Defendants Diocese of Brooklyn's and St. Paul the Apostle's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

36. Defendants Diocese of Brooklyn and St. Paul the Apostle:

37. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;

38. failed adequately to supervise the activities of Father Fox;

39. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and

40. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

41. At all times material hereto, with regard to the allegations contained herein, Father Fox was under the supervision, employ, direction and/or control of

Defendants Diocese of Brooklyn and St. Paul the Apostle.

42. At all times material hereto, Defendants Diocese of Brooklyn's and St. Paul the Apostle's actions were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

43. As a direct and/or indirect result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

44. By reason of the foregoing, Defendants Diocese of Brooklyn and St. Paul the Apostle are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

### THIRD CAUSE OF ACTION

#### Breach of Non-Delegable Duty

45. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

46. Plaintiff, when he was a minor, was placed in the care and supervision of the Defendants Diocese of Brooklyn and St. Paul the Apostle for the purposes of, *inter alia*, providing Plaintiff with a safe environment in which to participate in religious, educational, youth and recreational activities. There existed a non-delegable duty of trust between Plaintiff and Defendants Diocese of Brooklyn and St. Paul the Apostle.

47. Plaintiff was a vulnerable child when placed within the care of Defendants Diocese of Brooklyn and St. Paul the Apostle.

48. As a consequence, Defendants Diocese of Brooklyn and St. Paul the Apostle were in the best position to prevent Plaintiff's abuse, to learn of Father Fox's repeated sexual abuse of Plaintiff, and to stop it.

49. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of the Defendants Diocese of Brooklyn and St. Paul the Apostle,



Defendants Diocese of Brooklyn and St. Paul the Apostle breached their non-delegable duty to Plaintiff.

50. At all times material hereto Father Fox was under the supervision, employ, direction and/or control of the Defendants Diocese of Brooklyn and St. Paul the Apostle.

51. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

52. By reason of the foregoing, Defendants Diocese of Brooklyn and St. Paul the Apostle are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

#### **FOURTH CAUSE OF ACTION**

##### **Breach of Fiduciary Duty**

53. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

54. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Diocese of Brooklyn and St. Paul the Apostle. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the agent or servant of the Defendants Diocese of Brooklyn and St. Paul the Apostle. This entrustment of the Plaintiff to the care and supervision of the Defendants Diocese of Brooklyn and St. Paul the Apostle, while the Plaintiff was a minor child, required the Defendants Diocese of Brooklyn and St. Paul the Apostle to assume a fiduciary relationship and to act in the best interests of the Plaintiff, as well as to protect him while he was a minor and vulnerable child.

55. Pursuant to their fiduciary relationship, Defendants Diocese of Brooklyn and St. Paul the Apostle were entrusted with the well-being, care, and safety of Plaintiff.

56. Pursuant to their fiduciary relationship, Defendants Diocese of Brooklyn and St. Paul the Apostle assumed a duty to act in the best interests of Plaintiff.

57. Defendants Diocese of Brooklyn and St. Paul the Apostle breached their fiduciary duty to Plaintiff.

58. At all times material hereto, the actions and/or inactions of Defendants Diocese of Brooklyn and St. Paul the Apostle were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff.

59. As a direct result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

60. By reason of the foregoing, Defendants Diocese of Brooklyn and St. Paul the Apostle are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

#### **FIFTH CAUSE OF ACTION**

##### **Negligent Infliction of Emotional Distress**

61. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

62. As described above, the actions of Defendants Diocese of Brooklyn and St. Paul the Apostle, their agents, servants, and/or employees were conducted in a negligent and/or grossly negligent manner.

63. Defendants Diocese of Brooklyn's and St. Paul the Apostle's actions endangered Plaintiff's safety and caused him to fear for his own safety.

64. As a direct and proximate result of Defendants Diocese of Brooklyn's and St. Paul the Apostle's actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

65. By reason of the foregoing, Defendants Diocese of Brooklyn and St. Paul the Apostle are liable to the Plaintiff, jointly, severally and/or in the alternative liable to

the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

#### SIXTH CAUSE OF ACTION

##### **Breach of Duty *in Loco Parentis***

66. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 19 as if fully set forth herein.

67. While he was a minor, Plaintiff was entrusted by his parents to the control of the Defendants Diocese of Brooklyn and St. Paul the Apostle, as well as directly to Father Fox, an agent or servant of Defendants Diocese of Brooklyn and St. Paul the Apostle, for the purposes of *inter alia*, providing Plaintiff with appropriate guidance and an opportunity to enjoy educational and youth activities under responsible adult supervision. These Defendants owe — and owed — a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

68. Defendants Diocese of Brooklyn and St. Paul the Apostle breached their duty to act *in loco parentis*.

69. At all times material hereto, Defendants Diocese of Brooklyn's and St. Paul the Apostle's actions were willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

70. As a direct result of Defendants Diocese of Brooklyn's and St. Paul the Apostle's conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

71. By reason of the foregoing, Defendants Diocese of Brooklyn and St. Paul the Apostle are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law; and
- E. Awarding such other and further relief as to this Court may seem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

Dated: November 14, 2019  
New York, New York

Respectfully Submitted,

/s/ Paul J. Hanly, Jr. \_\_\_\_\_  
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